STATE OF MICHIGAN
SUPREME COURT

Appeal from the Court of Appeals and Wayne County Circuit Court

CITY OF DETROIT,

Plaintiff-Appellant,

and

JENNIFER M. GRANHOLM, ex rel MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY (MDEQ) AND MICHIGAN DEPARTMENT OF NATURAL RESOURCES (MDNR),

Intervening Plaintiffs-Appellants,

v.

PETER ADAMO, ANDIAMO, INC., a Michigan corporation, and 5900 ASSOCIATES, L.L.C., a Michigan limited liability company,

Defendants-Appellees.

Sup. Court No. 114794
Court of Appeals No. 211552
Wayne Cty. Circt. Ct. No. 96-638479-CE

APPELLEES' BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

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Dated: April 15, 2002

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STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

I. Did MCLA §211.131e, prior to its July 1999 amendment, require the State to serve a single notice Department of Treasury hearing on all owners of a record interest in a property in order to trigger the running of the final redemption period for all record interest owners?

Defendants-Appellees answer, "Yes."

The Court of Appeals answers, "Yes."

Plaintiff-Appellant answers, "No."

II. Does the July 1999 amendment to the notice provisions of §211.131e apply retroactively to validate defective Section 211.131e notices and to terminate valid redemption rights?

Defendants-Appellees answer, "No."

The Court of Appeals answers, "Yes."

Plaintiff-Appellant answers, "Yes."

III. Assuming that the Michigan Legislature intended the July 1999 amendment to the notice provisions of §211.131e apply retroactively to validate defective Section 211.131e notices and to terminate valid redemption rights, does the amendment violate Appellees' due process rights under the Michigan and U.S. Constitutions?

Defendants-Appellees answer, "Yes."

The Court of Appeals answers, "Yes."

Plaintiff-Appellant answers, "No."

INTRODUCTION

The City of Detroit appeals the Court of Appeals judgment affirming the Wayne County Circuit Court's judgment holding that Appellees Andiamo, Inc. and 5900 Associates, L.L.C. had redemption rights in two properties subject to tax deeds issued to the State of Michigan (the "State"). The decisions of the courts below are supported by the plain language of Section 211.131e before its amendment in July 1999 ("Former 211.131e") and a century of Michigan case law which has held that redemption rights may not be terminated by service of notice on less than all record interest owners in a property. A majority of the States of the United States agree with this position.

The City of Detroit and the State successfully lobbied for a change in this law. The Michigan Legislature amended MCLA §211.131e in the summer of 1999 to provide that redemption rights may be cut off on a piecemeal basis ("Amended 211.131e"). Amended 211.131e applies to all property bid to the State after October 1976. The amendment does not apply retroactively, however, to Section 211.131e notices served pursuant to Former 211.131e.

This Court should affirm the Court of Appeals judgment.

First, the Court of Appeals correctly interpreted Former 211.131e and properly applied longstanding precedent in ruling that Appellees' redemption rights were never terminated. Michigan law required the State to serve a Section 211.131e notice of hearing on all record interest owners in order to trigger the running of the final redemption period for each property. The State failed to strictly comply with this requirement and therefore notices served on former owners of the Properties were invalid.

Second, Amended 211.131e does not "terminate" Appellees' redemption rights. It merely

permits the State going forward to terminate redemption rights by service of separate Dow Notices on owners of record interests in a property. Amended 211.131e applies retroactively to all state-bid properties acquired since 1976 and not just to state-bid properties acquired after the date of the amendment. Amended 211.131e does not apply retroactively to validate Dow Notices which were defective under Former 211.131e.

Third, even if Amended 211.131e were enacted to apply to defective Dow Notices served pursuant to Former 211.131e, *Amended 211.131e may not be applied retroactively to terminate* Appellees' redemption rights in the two properties in question. To do so would violate Appellees' due process rights under the Michigan and U.S. Constitutions

Fourth, the City claims no right, title, or interest whatsoever in either of the two subject properties. Accordingly, the City lacks standing to pursue this appeal. Simply stated, the City may not claim the State's appellate rights.

Finally, this Court must affirm the Court of Appeals' judgment as to the property located at 5900 Livernois, Detroit, Michigan regardless of any rulings it may make as to the property located at 6501 Harper Avenue, Detroit, Michigan. The City's appeal as to the Livernois Property is moot. 5900 Associates redeemed the Livernois Property by paying over $400,000 in outstanding real property taxes and received a reconveyance deed from the State. As a result of the redemption, the State's separate appeal concerning this Property was dismissed with prejudice by the Court of Appeals.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Appellees are in the business of real estate acquisition and development. In 1995, Peter Adamo as the agent for Andiamo and 5900 Associates, investigated and negotiated the purchase

of two parcels of property: one parcel located at 5900 Livernois, Detroit, Michigan, formerly known as the Old World Trade Center (the "Livernois Property") and another parcel located at 6501 Harper Avenue, Detroit, Michigan (the "Harper Property"). 5900 Associates and Andiamo are the respective owners of the Livernois and Harper Properties.

When purchased, the two Properties were subject to tax deeds issued to the State of Michigan (the "State"). The Property owners' redemption rights were governed by Former 211.131e(1), which provided that the "redemption period on property deeded to the state . . . shall be extended until the owners of a recorded property interest have been notified of a hearing before the department of treasury". The purpose of the notice was "to allow the owners to show cause why the tax sale and the deed to the state should be canceled." MCLA §211.131e(4).

In March 1994, the State served a Section 211.131e notice ("Dow Notice") on the former owner of the Harper Property but not on other interestholders.[1] In September 1995, the State served a Dow Notice on the former owner of the Livernois Property but not on other interestholders.[2] Under the plain language of Former 211.131e(1), the State failed to terminate the Property owners' redemption rights.

In purchasing Properties subject to tax deeds, Appellees relied on their counsel's opinion that the sellers still had redemption rights. Appellees also relied on their dealings with and the practices of the Delinquent Property Tax Section of the Local Property Services Division for the

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[1] The State failed to serve the March 1994 Dow Notice on Caputo & Company, P.C., which filed a $165,000 mortgage against the Property, the United States of America, which filed a $128,540 federal tax lien against the Property, and two individuals who had interests of record.

[2] The State failed to serve the September 1995 Dow Notice on Fruehauf Finance Company, the assignee of a $385,000 mortgage filed against the Property, Chase Manhattan Bank, and General Electric Capital Corp.

Department of Treasury. The Delinquent Property Tax Section is the agency in charge of administering state-bid properties and delivering Dow Notices to property owners. Thomas Willard is the Manager of the Delinquent Property Tax Section.

At the time the Properties were purchased, the Delinquent Property Tax Section knew that Section 211.131e required service of a single Dow Notice on all record interest owners before the redemption rights of a single record interest owner could be terminated. Accordingly, the Delinquent Property Tax Section permitted a record interest owner who had received a Dow Notice to redeem a property if all record interest owners had not received the required Dow Notice.

Shortly before 5900 Associates' purchased the Livernois Property, Mr. Adamo spoke with Mr. Willard, who confirmed orally and subsequently in writing that the Properties were still subject to redemption by their owners.

On August 26, 1996, the City filed its Complaint in Wayne County Circuit Court, requesting the Court to rule that Appellees had no remaining redemption rights in the Properties. The State subsequently intervened as a co-plaintiff. The City's underlying, true, and sole motivation for contesting Appellees' ownership was their desire to acquire these "high priority sites" from the State "because of their great potential for redevelopment."

In July 1997, the State forwarded a second Dow Notice to record interest owners in the Livernois Property who did not receive the first Dow Notice. Neither Appellees nor their counsel received the second Notice, because City's counsel specifically instructed Mr. Willard not to serve the Notice on Appellees. Because the State failed to serve the second Notice on all record owners of interest, the second Notice, like the first, was defective and failed to initiate the

running of the redemption period on the Livernois Property under MCLA §211.131e.

In September 1997, the State forwarded a second Dow Notice to record interest owners in the Harper Property. Again, neither Appellees nor their counsel received the second Notice, because the City's counsel specifically instructed Mr. Willard not to serve the Notice on Appellees. Because the State failed to serve the second Notice on all record interest owners, the second Notice, like the first, was defective and failed to initiate the running of the redemption period on the Livernois Property under Former 211.131e.

In September 1997, Paul Dominguez, a New York resident and investor, became a 50% member of 5900 Associates. Mr. Dominguez loaned 5900 Associates over $405,000 (the "Dominguez Loan") so that the Livernois Property could be redeemed. In late September, 5900 Associates used the Loan to pay all outstanding City and County real property taxes on the Property. Upon confirmation of payment, the State issued a Quit Claim Reconveyance Deed to 5900 Associates, acknowledging the validity of the redemption and terminating the State's interest in the Property. 5900 Associates' redemption of the Livernois Property and the State's delivery of the Reconveyance Deed immediately mooted any potential appeal of the Circuit Court Judgment as to this Property.

Thereafter, Appellant and Appellees filed their respective Motions and Cross-Motion for Summary Disposition. On March 5, 1998, the Circuit Court issued an Opinion and Order, subsequently modified. In its Opinions, the Circuit Court held that Appellees owned and still had rights to redeem the Livernois and Harper Properties because the State had failed to comply with the notice provisions of Former §211.131e. Specifically, the Circuit Court held that the final redemption period for the Properties never commenced and therefore never expired because the

State failed to serve the same Dow notice on all record interest owners of the Properties.

On April 16, 1998, the Circuit Court converted its Opinions and Orders to a Final Judgment.

On April 24, 1998, the City and the State moved the Circuit Court to stay the effect of the Final Judgment pending appeal. At a May 5, 1998 hearing, Wayne County Circuit Court Judge Battani denied the stay motion. On May 7, 1998, Judge Battani entered her order denying the City's stay motion.

The City of Detroit and State of Michigan filed claims of appeal from the Circuit Court's Final Judgment on May 7, 1998. The two appeals were initially consolidated and subsequently unconsolidated. On June 17, 1998, the City and State filed a motion requesting the Court of Appeals to stay the effect of the Final Judgment pending the consolidated appeal. On August 14, 1998, the Court of Appeals entered its order denying the second stay motion.

In May 1998, 5900 Associates executed and delivered to Cumberland Casualty & Surety Co. an Indemnity Agreement and a Mortgage securing 5900 Associates' obligations under the Agreement. On the strength of these agreements and 5900 Associates' title to the Livernois Property, Cumberland Casualty issued a $2,000,000 bond securing Munday Sanitary's purchase of a Louisiana landfill.

On February 23, 1999, the Court of Appeals affirmed the Circuit Court in the City's appeal. In its decision, the Court stated:

> We hold that the trial court properly applied the rule of White to this case. Because the state failed to notify all interested owners of their right to redeem, defendants' grantors still had a right to redeem at the time the quitclaim deeds were executed, which was conveyed to defendants. The state should have located all those with a significant interest in the property and served them with notice at the same time it notified defendants' grantors of their rights to redeem. Because the state failed to do so, it sent more notices in

July 1997 to those who had not been previously notified. However, at the time defendants had an interest in the properties and should have been notified of their rights to redeem. Accordingly, the state did not extinguish defendants' rights to redeem. Affirmed.

Thereafter, the City filed its Application for Leave to Appeal with this Court.

On March 23, 1999, 5900 Associates and Andiamo, Inc. executed and delivered to their undersigned counsel "Quit Claim Deeds" conveying undivided 20% interests in the Livernois and Harper Properties to secure attorneys' fees owed to counsel by 5900 Associates, Andiamo, Inc., and their affiliates. Counsel recorded the Deeds with the Wayne County Register of Deeds.

On July 23, 1999, the Michigan legislature amended Section 211.131e of the Property Tax Act to permit the State to cut off final redemption period rights on a piecemeal basis by serving separate Dow Notices on record interest owners. Amended 211.131e provides that it applies to all property acquired by the State since 1976. It does not provide that retroactively validates defective Dow Notices served by the State pursuant to Former 211.131e:

> (1) For all property the title to which vested in this state under this section after October 25, 1976, the redemption period on property deeded to the state . . . shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the department of treasury . . . ;
>
> (2) For all property the title to which vested in this state under this section after October 25, 1976, 1 hearing shall be held to allow each owner of a recorded property interest the opportunity to show cause why the tax sale and the deed to the state should be canceled. . . . The department of treasury may hold combined or separate show cause hearings for different owners of a recorded interest.
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> * * *
>
> (5) For all property the title to which vested in this state under this section after October 25, 1976, the owner of a recorded property interest who has been properly served with a notice of hearing under this section and who fails to redeem the property as provided under this section shall not assert any of the following:
>
> > (a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.

(b) That the redemption period provided under this section was extended in any way on the grounds that some other owner of a property interest was not also served.

On October 11, 1999, the State filed a "Supplemental Authority" with the Court of Appeals in its case, which recognized title to the Livernois Property in 5900 Associates pursuant to its earlier redemption. Thereafter, the Court of Appeals entered an Order dismissing the State's appeal with prejudice as to the Livernois Property.

On February 9, 2001, the Court of Appeals issued an opinion affirming the Circuit Court Judgment in the State's appeal. In its opinion, the Court followed its ruling in the City's appeal and refused to apply Amended 211.131e retroactively to terminate Appellees' redemption rights. The State then filed an Application for Leave to Appeal to this Court.

In January 2002, this Court granted the City's and State's Applications for Leave to Appeal.

LEGAL ARGUMENT

I. THE COURT OF APPEALS PROPERLY INTERPRETED GPTA §131e AND PROPERLY APPLIED THE COURT'S HOLDING IN WHITE v SHAW IN RULING THAT APPELLEES HAVE VALID REDEMPTION RIGHTS.

A. Tax Sale Statutes are Strictly Construed and the State and Private Tax Sale Purchasers Must Strictly Comply With Such Statutes.

Michigan courts have uniformly held that tax forfeiture provisions must be strictly construed and that private tax sale purchasers must strictly comply with statutory procedures. "The Courts of Michigan jealously guard the rights of owners who are about to lose their property through tax sales. Statutes authorizing tax sales must be strictly construed and there must be a rigid adherence to the statutory procedure." *Schram v. Safety Investment Co.*, 39 F.Supp. 517 (E.D. Mich. 1941); *McQuade v. State,* 321 Mich. 235, 32 N.W.2d 510 (1948); *Lake Orion*

Heights v. Oakland Circuit Judges, 285 Mich. 512, 281 N.W. 307 (1938); *Thompson v. Auditor General,* 261 Mich. 624, 247 N.W. 360 (1933); *Littlefield v. Petrick,* 250 Mich. 437, 230 N.W. 507 (1930); *In re Sabec,* 137 B.R. 659, 665 (Bankr. W.D. Mich. 1992).

Michigan courts are no less strict in guarding the rights of taxpayers whose property has been sold at tax sale to the State:

> Under Michigan law, tax title proceedings are "closely scrutinized and strictly construed."

Consolidated Rail Corporation v. State of Michigan, 1996 WL 739175 (W.D. Mich. 1996) (applying MCLA §211.131e).

> Our Court has repeatedly held that strict compliance with the tax sale notice provisions is required.

Brandon Township v. Tomkow, 211 Mich. App. 275, 284 (1995) (applying MCLA §211.131e).

> Michigan law is clear. "It is a uniform principle of our tax laws that the validity of a tax-purchaser's title depends upon compliance with the statute relating thereto. Substantial compliance is not sufficient, . . . and where the notice of reconveyance is insufficient a grantee under a State tax deed acquires no title to the premises."

United States v. Varani, 780 F2d 1296, 1320 (quoting *St. Helen Resort Ass'n v. Hannah,* 321 Mich. 536, 543, 33 N.W.2d 74 (1948); *Whetstone v. Michigan Consolidated Gas Co.,* 219 F.Supp. 121, 123 (E.D. Mich. 1963)).

B. Michigan Law and Procedure Regarding Tax Sales to the State.

When a tax delinquency exists, the real property subject to the unpaid taxes may be sold in accordance with the General Property Tax Act. MCLA §211.60 et seq. Pursuant to the Tax Act, when no private bids are received, the property is "bid off" to the State.

Under the Tax Act, taxpayers have until the first Tuesday in May of the year following a tax sale to redeem property from the preceding year's tax sale (the "First Redemption Period"). MCLA. §211.74. Following expiration of the first redemption period, title to state-bid property

"vests" in the State. MCLA§211.67.[3]

Taxpayers may also redeem property during a second redemption period which runs from the end of the first redemption period until the first Tuesday in the following November. MCLA §211.131c.

For state-bid parcels, taxpayers have a third and final opportunity to redeem. Former 211.131e provided in pertinent part:

> (1) The redemption period on property deeded to the state . . . shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the department of treasury . . .
>
> (3) After expiration of the redemption periods provided in Section 131(c), on the first Tuesday in November after title to the property vests in this state, property may be redeemed up to 30 days following the date of hearing provided by this section by payment of the amounts set forth in subsection (4) and in section 131c(1), plus an additional penalty of 50% of the tax on which foreclosure was made . . . A redemption under this section shall reinstate title as provided in section 131c(4)."

Accordingly, the final redemption period under Former 211.131e ran until the State served a single Dow Notice on all record interest owners. Further, a redemption by any record interest owner revives all titles, liens, and encumbrances that existed prior to the tax sale. MCLA §211.131(c). Under both Former and Amended 211.131e, if the third redemption period expires without redemption, title to a property finally and absolutely vests in the State.[4]

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[3] Although the Tax Act "refers to the state's title as being 'absolute', ... it clearly provides for defeasance of the state's title if the [owner] redeems the property." *In re Tranter*, 171 B.R. 256, 257 (Bankr. W.D. Mich. 1994) (emphasis added). "The issuance of a tax deed by the state treasurer" upon the expiration of the First Redemption Period is purely 'ministerial'". *Sabec, supra*, 137 B.R. at 666 (emphasis added).

[4] As stated by the *Tranter* Court:

> [T]he expiration of the final redemption period] is the point at which the title ultimately 'vests' irrevocably with the state and is no longer subject to defeasance....

C. The Court of Appeals Correctly Ruled That Michigan Law and Former 211.131e Precluded the State From Cutting Off Redemption Rights by Sending Separate Dow Notices to Record Interest Owners.

Prior to the amendment of MCLA §211.131e, the Michigan courts consistently held that neither the State nor a private tax sale purchaser could proceed in a piecemeal fashion to cut off redemption rights of owners. As stated by this Court:

> "The effect of proceedings under the tax law, if valid, is to divest the true owner of the title to his property and to vest the same in the holder of the tax deed, and such proceedings must be closely scrutinized and strictly construed. The rule is well settled in this State that: **'The tax title holder cannot proceed by piecemeal to cut off the right of redemption of each part owner. Until he has complied with the statute as to all, the right of redemption remains to all.** It seems to me that this is the reasonable construction that is given to these statutes.' *McVannel v. Pure Oil Co.*, 262 Mich. 518, 522 (1933), citing *White v. Shaw*, 150 Mich. 270, 273 (emphasis added).

The Michigan Court of Appeals in *Dow v. State of Michigan*, 396 Mich. 192 (1976) agreed with this Court's conclusion:

> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections . . . "
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> ***
>
> "After sale to the state, formal notice to **all** owners of significant property interests of the constitutionally required opportunity for hearing and redemption satisfies due process requirements." Id. at 206-207.

For the century before the amendment to MCLA §211.131e, Michigan courts ruled (a)

> The state disagrees with this assessment, [contending] that title vests 'absolutely' in the state at the end of the first redemption period. However, I am not persuaded to come to that same conclusion.... [C]ommon sense tells us that there can be no 'absolute vesting' as long as [the owner] can redeem the property. Any 'vesting' subject to defeasance cannot be absolute.... The vesting of absolute title in the state is not final until the expiration of the third redemption period."

Tranter, 171 B.R. at 260.

that strict compliance with statutory notice procedures for redemption rights regarding real property sold at tax sales is absolutely mandatory, and (b) that failure to give notice to even one of one hundred owners of significant interests in a property means that redemption rights remain in all one hundred owners of such

In *City of Flint v. Takacs*, 181 Mich. App. 732 (1989), the Court of Appeals held that all owners of significant interests deeded to the State pursuant to the Tax Act were entitled to receipt of the same Dow Notice before the final redemption period would start:

> "Each such interest is substantial enough to invoke the benefit of the statutory provision for notice. **The failure to give each record owner of an interest in the land bid off to the state notice of the right of redemption leads us to conclude that compliance with MCLA §211.131e was never achieved . . . [Accordingly,] the record owners redemption rights remain extant.**" Id. at 739-740 (emphasis added).

In *Brandon Township, supra*, the Michigan Court of Appeals panel concurred with the *Takacs* decision:

> "[In the Takacs case] the State acquired land after a tax sale. It notified the two major land holders of a hearing before the sale, pursuant to MCLA 211.131e . . . However, it did not notify a number of tenants in common whose interests amounted to less than two percent of the value of the parcel. We held that failure to notify the tenants in common rendered notice inadequate, because the due process concerns raised in Dow were equally applicable to the facts of the case . . . "

Brandon Township, 211 Mich. App. at 283.

In *Varani*, the Sixth Circuit Court of Appeals similarly rejected the State's argument that it could terminate redemption rights in a piecemeal fashion:

> "'[T]he right of redemption continues as to everyone entitled to exercise it unless and until the tax-title holder cuts off the right of each one entitled to redeem by service of notice in accordance with the statute.' *Geraldine v. Miller*, 322 Mich. 85, 93-94, 33 N.W.2d 672 (1948).'"
>
> Commentators also noted that Michigan prohibited piecemeal extinguishment of

redemption rights:

> Most jurisdictions that have dealt with the question of insufficient or lack of notice to redeem from the sale or for the issuance or confirmation of a tax deed, have held or recognized that a lack of notice to one party may be taken advantage of by a party who did in fact receive notice of the sale . . .
>
> In regard to notice requirements to cut off the right of redemption from a tax sale, the rule that the statutory provisions are mandatory and must be strictly complied with, has been recognized by many courts that have stated that failure to give due notice to one party entitled thereto may be taken advantage of by another party, even though the latter has received due notice.

See ALR Annotation: Right of Interested Party Receiving Due Notice of Tax Sale or of Right to Redeem to Assert Failure or Insufficiency of Notice to Other Interested Party, 45 ALR 4th 447, 452-53. This annotation identifies Michigan as a jurisdiction which expressly prohibits the termination of redemption rights on a piecemeal basis, relying upon nine Michigan cases going back ninety years. *Id.* at 463.

Indeed, even the Assistant Attorney General agreed that Michigan law did not permit rights of redemption to be cut off on a piecemeal basis. See Kevin Smith, "Foreclosure of Real Property Tax Liens", Sept. 1996 Michigan Bar Journal at 953:

> "**One** final right of redemption after expiration of the Section 131c redemption period arises under Section 131e of the Act. Section 131e provides that **a right of redemption** shall be extended until **owners** of a significant property interest in the lands have been notified of **a hearing** before the Department of Treasury. Section 131e allows redemption up to 30 days following **the hearing**." Id. at 954 (emphasis added).
>
> ***
>
> "Running of the Redemption Period. **It has long been held that 'until the . . . statutory notice is served upon all parties entitled thereto and proof thereof is made and filed, the right of redemption remains to all.'** Id. at 955.

Moreover, the plain language of GPTA §131e mandates the conclusion that the State could not terminate redemption rights by the piecemeal service of Dow Notices under Former 211.131e. The statute expressly provides that the "redemption period on property deeded to the

state . . . shall be extended until the owners of a recorded property interest have been notified of a hearing before the department of treasury". Former 211.131e speaks of a single redemption period for all record interest owners, the running of which may only be triggered by the State's service of a single Dow Notice. A strict construction of this provision requires the State to serve a single Dow Notice on all record interest owners to extinguish redemption rights in a property.

It is undisputed that the State never served the same Dow Notice on all record interest owners of either Property. Accordingly the Court of Appeals correctly applied *White v Shaw* and its progeny to the facts of this case when it stated:

> We hold that the trial court properly applied the rule of White to this case. Because the state failed to notify all interested owners of their right to redeem, defendants' grantors still had a right to redeem at the time the quitclaim deeds were executed, which was conveyed to defendants. The state should have located all those with a significant interest in the property and served them with notice at the same time it notified defendants' grantors of their rights to redeem. Because the state failed to do so, it sent more notices in July 1997 to those who had not been previously notified. However, at the time defendants had an interest in the properties and should have been notified of their rights to redeem. Accordingly, the state did not extinguish defendants rights to redeem. Affirmed.

D. Amended GPTA §131e Does Not Apply Retroactively to Validate Defective Notices Served Pursuant to Former 211.131e.

Amended 211.131e(5) permits the State to terminate redemption rights by the piecemeal service of Dow Notices:

> (5) For all property the title to which vested in this state under this section after October 25, 1976, the owner of a recorded property interest who has been properly served with a notice of hearing under this section and who fails to redeem the property as provided under this section shall not assert any of the following:
>
> > (a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.
> >
> > (b) That the redemption period provided under this section was extended in any way on the grounds that some other owner of a property interest was

not also served.

The City contends that Amended 211.131e retroactively validates the defective Dow Notices served pursuant to Former 211.131e on record interest owners of the Properties and therefore terminates Appellees' redemption rights. Amended 211.131e(5) expressly applies to "all property the title to which vested in this state under this section after October 25, 1976." The amendment does not state, however, that it applies to "all notices served by the State under this section after October 25, 1976."

In *Lynch & Co. v. Flex Technologies, Inc.*, this Court set forth a method for determining whether a statute should be applied retroactively:

> In determining whether a statute should be applied retroactively or prospectively only, "[t]he primary and overriding rule is that legislative intent governs. All other rules of construction and operation are subservient to this principle." *Franks v White Pine Copper Division,* 422 Mich 636, 670; 375 NW2d 715 (1985). Moreover, "statutes are presumed to operate prospectively unless the contrary intent is clearly manifested." *Id.* at 671; see also *Hughes v Judges Retirement Bd,* 407 Mich 751, 85; 282 NW2d 160 (1979). This is especially true if retroactive application of a statute would impair vested rights, create a new obligation and impose a new duty, or attach a disability with respect to past transactions. See *Franks, supra,* at 671-674.
> So what was the Legislature's intent

Analyzing legislative intent in *Lynch,* this Court looked closely at the statute, and specifically focused on what the legislature could have done, but did not do, if it intended the retroactive effect proposed by the *Lynch* plaintiff. Without clear evidence of legislative intent, the City's interpretation cannot be imposed on the facts of this case. As the *Lynch* court concluded, "we . . . reemphasize the strong presumption against the retroactive application of statutes in the absence of a clear expression by the Legislature that the act be so applied." *Id.*

The clear purpose of this retroactivity provision was to apply the new notice provisions to

all state-bid properties for which redemption rights had not run prior to the amendment ("Pre-Amendment Properties") and not just to properties bid to the State after the date of the Amendment's enactment/ The Legislature's retroactive application of the new notice provisions to Pre-Amendment Properties was intended to facilitate the State's prospective termination of redemption rights in Pre-Amendment Properties and not to retroactively (and unconstitutionally) validate defective Notices served by the State prior to the amendment ("Pre-Amendment Notices").

The State could have provided that amended §131e applied not only to Pre-Amendment Properties but to Pre-amendment Notices as well. It chose not to do so. The Amendment effected only a change in the procedure for termination of redemption rights. It did not effect a substantive, unconstitutional change in the law by retroactively terminating the rights of property owners who reasonably relied on the law as it existed prior to the amendment of Section 211.131e.

Finally, assuming that this Court were to find that Amended 211.131e may be reasonably interpreted either to apply or not apply to Pre-Amendment Notices, this Court should adopt the interpretation which favors redemption.

For the foregoing reasons, Amended 211.131e does not apply retroactively to terminate Appellees redemption rights in the Properties.

II. THIS COURT MAY NOT APPLY AMENDED GPTA §131e RETROACTIVELY TO TERMINATE APPELLEES' REDEMPTION RIGHTS BECAUSE TO DO SO WOULD VIOLATE APPELLEES' RIGHTS UNDER THE DUE PROCESS CLAUSES OF THE MICHIGAN AND U.S. CONSTITUTIONS.

A. Redemption Rights are Protected Under the Due Process Clauses of the Michigan and U.S. Constitutions.

Even if the Legislature intended to apply Amended 211.131e retroactively to terminate otherwise valid redemption rights, this Court should not apply this statute to terminate Appellees' redemption rights in the Properties. Retroactive application of amended GPTA §131e would violate Appellees' rights under the Due Process Clauses of the U.S. and Michigan Constitutions. Appellees' redemption rights are vested rights protected from unilateral termination by the Legislature under the Due Process Clauses.

Under Michigan law, "due process principles prevent retrospective laws from divesting rights to property or vested rights or from impairing contracts." *City of Detroit v. Walker*, 445 Mich. 682, 698, 520 N.W.2d 135 (1994).

This Court's decision in *Dow v. Michigan*, 396 Mich. 192, 240 N.W.2d 450 (1976) and subsequent cases establish unequivocally that a right of redemption is a vested right protected under the Due Process Clause of the Michigan Constitution. *Dow* at 204; *Brandon v. Tomkow*, 211 Mich. App. 275, 535 N.W.2d 268 (1995); *Flint v. Takacs*, 181 Mich. App. 732, 738, 449 N.W.2d 699, 702 (1989). "Even if the right to redeem were not constitutionally rooted, once granted by statute it is protected by the Due Process Clause." *Dow* at 207, n. 21. The United States Supreme Court reached the same conclusion in *Mennonite Board v. Adams*, 462 U.S. 791 (1983).

Appellees' redemption rights in the Properties were valid and intact as of the date of enactment of Amended 211.131e. Moreover, prior to the amendment, Appellees had no legal obligation to redeem the Properties. It has long been Michigan law that an owner is under no obligation to redeem until a proper notice is served in strict compliance with statutory requirements. *Otto v. Phillips*, 250 Mich. 546, 547 (1930); *White v. Shaw, supra.*

Further, Appellees and others unquestionably and reasonably relied on Appellees' redemption rights as they existed before the amendment of §131e. Richard Dominguez reasonably relied on 5900 Associates' redemption rights when he loaned it over $400,000 to redeem the Livernois Property. 5900 Associates reasonably relied on its redemption rights when it used the Dominguez loan to redeem the Property. The State reasonably relied on 5900 Associates' redemption rights when it permitted redemption and reconveyed the Livernois Property to 5900 Associates. Cumberland Casualty & Surety Company reasonably relied on 5900 Associates' redemption and ownership of the Livernois Property when it issued a $2,000,000 bond secured by a mortgage on the Property. Appellees' counsel reasonably relied on Appellees' title to and redemption rights in the Properties when he accepted quit claim deeds of undivided interests in the Properties to secure over $500,000 in attorneys fees owed by Appellees and their affiliates.

B. Statutes Retroactively Terminating Existing Redemption Rights are Unenforceable Because they Violate Due Process Rights.

The New York Court in *Mooney v. Miller,* 119 Misc. 134, 195 N.Y.S. 437 (Sup. Ct. New York 1922) was faced with the identical issue that this Court is faced with. In *Mooney,* the State of New York amended its Code of Civil Procedure to effectively provide a retroactive statute of limitations on the right of a mortgagor to redeem real property. At the time of the amendment, the plaintiff in *Mooney* had an absolute right to redeem the real property in question. That right was terminated when the amendment was enacted.

The *Mooney* court noted:

> Plaintiff contends that the amendment is unconstitutional, in that it deprives her of her property without due process of law; that upon the amendment taking effect she was *ipso facto* deprived of the right to redeem, being a right possessed by one

person of enforcing a claim against another, is property . . .

Is the section as amended . . . to be construed retroactively, so as to cut off plaintiff's right of redemption, and automatically vest the title in the defendant, and if so was it a proper exercise of legislative power?

The *Mooney* Court emphatically concluded that retroactive application of the amendment clearly violated plaintiff's due process rights:

The case of *Gilbert v. Ackerman*, 159 N.Y. 118, 53 N.E. 753, seems conclusively to negative such propositions. The court there says: "When the legislature makes a new statute of limitations, it should make some provision therein that, after the statute takes effect, parties whose rights of action are to be affected by the new law, shall have a reasonable period within which to prosecute their claims . . . The right possessed by a person of enforcing his claim against another is property and if a statute of limitations, acting upon that right, deprives the claimant of a reasonable time within which suit may be brought, it violates the constitutional provision that no person shall be deprived of property without due process of law."

In this action, the amendment under consideration . . . went into effect on September 1, 1919. So that on August 31, 1919, no limitation had begun upon the right of plaintiff to commence this action. On the day following, the statute having gone into effect, and defendant having been in possession as mortgagee for upwards of twenty years, with default in a condition of the mortgage, plaintiff was barred, by the language of the statute, from asserting her right to redeem it. There was not only a failure to provide "a reasonable period" of time, but there was not attempt made to provide any time whatever . . .

The conclusion, therefore, seems inevitable that [the amendment] is unconstitutional, in so far as it sought to be applied retroactively as a statute of limitations, and thus enforced as an absolute defense in this action.

The City contends that Amended 211.131e's purported retroactive termination of valid redemption rights is "remedial" and that no one has a vested right in any particular remedy. However, an amendment which extinguishes rather than merely modifies vested rights cannot properly be characterized as "remedial."

This Court has rejected the argument that substantive rights may be ignored by

characterizing legislation as remedial:

> [W]e have rejected the notion that a statute significantly affecting a party's substantive rights should be applied retroactively merely because it can also be characterized in a sense as "remedial". *Franks,* 422 Mich. at 673-674. In that regard, we agree with Chief Justice Riley's plurality opinion in *White v. General Motors Corp.*, 431 Mich. 387, 397, 429 N.W.2d 576 (1988), that the term "remedial" in this context should only be employed to describe legislation that does not affect substantive rights. Otherwise, "the mere fact that a statute can be characterized as 'remedial' . . . is of little value in statutory construction.

Frank W. Lynch & Co. v. Flex Technologies, Inc., 463 Mich. 578, 585, 624 N.W.2d 180 (2001).

Even though redemption rights may be reasonably modified by retroactive legislation, the Courts have rejected the argument that a retroactive statute terminating valid redemption rights is remedial and concluded that retroactive termination of such rights is impermissible.

In *Mercury Herald Co. v. Moore*, 22 Cal.2d 269, 272, 138 P.2d 673, the California court stated:

> Even if there were no distinction between the right to redeem before deed to the state and after, a change in the method of redemption would not necessarily be contrary to due process of law. While the law in effect at the time of the sale to the state governs the redemption of the property when the Legislature does not provide otherwise, it is settled that the Legislature may make **retroactive** changes in the method of redemption . . . **This power is not unlimited, however. The changes cannot be arbitrary or capricious but must be reasonable when measured in the light of the public interest to be served and the effect of the changes upon the rights of the property owner**. . . By providing for the redemption of the property after sale to the state in the event of delinquency, the state does not take the property outright from the owner but allows him not only to retain the title but the right to remove the tax lien and clear his title to the property. It does not follow that because the state could provide in the first instance for a complete taking of the property that it may with impunity provide **retroactively** for such a taking without giving the owner notice or a fair opportunity to prevent forfeiture of his property. See *Wood v. Lovett,* 313 U.S. 362, 371, 61 S.Ct. 983, 85 L.Ed. 1404. It is settled, however, that the Legislature may validly limit the time within which an existing right may be exercised if the period remaining for its assertion is a reasonable one . . . In the present case the redemptioner clearly received adequate notice and a fair opportunity to regain the property.

In *McCaslen v. Hamblen*, 37 Cal.2d 196, 200, 231 P.2d 1, 4 (1951), the Court stated:

> It is now settled, however, that the law in effect at the time of the sale to the state does not govern the redemption of the property when the Legislature has provided otherwise and that the Legislature may make reasonable retroactive changes in the method of redemption . . . The *Mercury Herald* case involved a similar problem arising from the 1941 amendments in the state tax law which changed the procedure for terminating the period of redemption following the close of the five-year period. As to property not tax-deeded at a determined date the deed to the state, following publication and sending of notice for sale of the land at public auction terminated the right of redemption. As to previously tax-deeded property special provisions applied governing notice of termination of the right. This court distinguished between the absolute right to redeem within the five year period, and the continuing right during the period of grace which could be terminated at any time on sale by the state. It was held that there was no contract right or vested interest in the continuance of the right after the five-year period but that the continuing redemption privilege could be revoked by the state upon compliance with due process; that due process was afforded by the provision for notice prior to sale at public auction or tax deed to the state if no sale had been made, and that such notice provided reasonable opportunity for redemption.

Accordingly, the State may change redemption procedures without violating the due process clause. However, if in making those changes, the right of redemption is terminated, substantive rights are impacted and due process rights are violated.

The City has failed to cite a single case which permits the retroactive termination of redemption rights. That is because no such authority exists.

Appellees have property interests worth millions of dollars. This Court should construe amended GPTA §131e in a fashion that will not violate Appellees' constitutional rights and frustrate their legitimate expectations by the unilateral termination of redemption rights:

> [I]t must be assumed that such was the intention of the legislature, as the only alternative would be to infer an intention to cut off all right of redemption as to prior sales, which would not only be contrary to the uniform state policy in that regard, and therefore not to be deduced by slight inference, but it would, moreover, affect injuriously the rights of those who before [the amendment of the redemption law] were entitled to redeem . . .

People v. County Treasurer of Saginaw County, 32 Mich. 260 (1875).

III. THE CITY OF DETROIT HAS NO STANDING TO APPEAL THE COURT OF

APPEALS' JUDGMENT.

The City of Detroit has no colorable interest whatsoever in either the Livernois Property or the Harper Property. The only standing that the City of Detroit had in this matter related to the environmental counts raised by the City in its Complaint against Appellees. Those counts were dismissed with prejudice by the Circuit Court and were not appealed. The City of Detroit is a total stranger, not an aggrieved party, to the rulings by the Circuit Court and Court of Appeals relating to Appellees' redemption rights and ownership interests in the Properties. Nor may the City ride the coattails of the State, which does have standing to appeal Andiamo, Inc.'s redemption rights in the Harper Property. Under Michigan law, "it is clear that one party cannot claim another party's appellate opportunities". *Farm Bureau General Insur. Co. of Michigan, v. Riddering,* 172 Mich. App. 696, 700, 432 N.W.2d 404 (1988).

IV. THE CITY'S APPEAL AS TO THE LIVERNOIS PROPERTY IS MOOT.

In September 1997, 5900 Associates redeemed the Livernois Property when it paid over $400,000 of outstanding property taxes. Subsequently, the State of Michigan reconveyed the Livernois Property to 5900 Associates in recognition of its lawful redemption and ownership of the Property. For these reasons, the Court of Appeals dismissed the State's appeal as to the Livernois Property with prejudice.

Accordingly, the City of Detroit's appeal as to 5900 Associates' right to redeem the Livernois Property has been rendered moot. 5900 Associates' title to the Livernois Property has been recognized by the State of Michigan and the Court of Appeals pursuant to a final judgment.

V. CONCLUSION.

The Final and Appellate Judgments are solidly based on well reasoned, long-standing

precedent. Amended GPTA §131e should not be interpreted to retroactively terminate Appellees' redemption rights. The Legislature enacted Amended 211.131e to apply only to Pre-Amendment Properties and not to defective Pre-Amendment Notices. Further, retroactive application of Amended 211.131e would run afoul of the federal and state constitutions and Appellees' due process rights. The State may not seize without notice or compensation property rights of Appellees and others worth tens of millions of dollars. All 5900 Associates asks is that it be accorded its ownership rights in the Livernois Property. All Andiamo, Inc. asks is that it be permitted to exercise its redemption rights under the law.

RELIEF REQUESTED

For the reasons set forth above, Appellees request the Court to affirm the judgment of the Court of Appeals and to grant Appellees such further or different relief as the Court finds appropriate pursuant to MCR 7.316(A).

Respectfully submitted,

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